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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO ACOSTA-ASTORGA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-71213

Agency No. A34-145-527

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 18, 2008^{**}

Before: REINHARDT, W. FLETCHER, and CLIFTON, Circuit Judges.

Francisco Acosta-Astorga, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's removal order. We have jurisdiction pursuant to 8

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1252. We review de novo questions of law, *Sandoval-Lua v. Gonzales*, 499 F.3d 1121, 1126-27 (9th Cir. 2007), and deny the petition for review.

We agree with the BIA's determination that Acosta-Astorga is removable under 8 U.S.C. § 1227(a)(2)(A)(iii) because the record establishes he was convicted of two counts of possession with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1). *See Olivera-Garcia v. INS*, 328 F.3d 1083, 1087 (9th Cir. 2003) (conviction under 21 U.S.C. § 841(a)(1) is a removable offense because it is an aggravated felony drug trafficking crime). As Acosta-Astorga was convicted of a substantive drug trafficking offense covered by 21 U.S.C. § 841(a)(1), we need not reach his contention that he is not removable as an aider and abettor. *Cf. id.* (distinguishing accessory after the fact convictions from violations of 21 U.S.C. § 841(a)(1)); *see also Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007).

PETITION FOR REVIEW DENIED.